IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1673 of 1991
with
SPECIAL CIVIL APPLICATION Nos 6209 and 13197 of 1993
and
SPECIAL CIVIL APPLICATION Nos 1269 and 1271 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KOTHARI OIL PRODUCTS CO

Versus

NATIONAL DAIRY DVELOPMENT BOARD

Appearance:
1. Special Civil Application No. 1673 of 1991
MR SN SOPARKAR, Sr. Advocate for Petitioner No. 1
NANAVATI ASSOCIATES for Respondent No. 1
MR SIRAJ GORI, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 17/06/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

All these petitions, though filed by five different petitioners, are filed against the common respondents viz. (i) National Dairy Development Board and (ii) State of Gujarat in its Finance Department. Special Civil Application No. 1673 of 1991 contains the following prayers, which are identical in the other four petitions :-

(A) to declare that Rule 42 of the Gujarat Sales Tax Rules, 1970 in so far as it restricts the claim of set off of sales-tax where the same is restricted to 90% in those cases where in the invoices the same is not separately recovered, is bad and illegal and be pleased to declare that the fraction (9/10) of the said formula is bad and illegal;

(B) to command the first respondent-National Dairy Development Board :

(i) to issue corrected invoice in respect of supply of palm oil and mustard oil by separately showing the amount of sales-tax charged under the invoice; and

(ii) to issue Form No.40 in respect of rapeseed oil purchased by the petitioner from the National Dairy Development Board;

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(C) to command the National Dairy Development Board to pay to the petitioner a sum of Rs.*(4,49,069.48) together with interest at the rate of 24% per annum from the date of realization of each invoice till payment.

Note - * The amount in prayer (C) varies in the respective petitions.

2. As far as prayer (A) is concerned, our attention is invited to the decision of the Apex Court in Godrej & Boyce Mfg. Co. Pvt. Ltd. vs. Commissioner of Sales-tax, AIR 1992 SC 2078 wherein the Apex Court had on

occasion to deal with similar rules being Rules 41 and 41A of the Bombay Sales-tax Rules, 1959. After examining the scheme of those Rules and the scheme of the Bombay Sales-tax Act, 1959, the Apex Court observed that a manufacturing dealer pays purchase tax when he purchases raw material and he is again obliged to pay the sales tax when he sells the goods manufactured by him out of the said raw material. Tax on both the transactions has the inevitable effect of increasing the price to the consumers besides adversely affecting the trade. It is for this reason that the aforesaid Rules enable the manufacturing dealer to claim set-off of the tax paid by him on the sale of goods manufactured from out of the said raw material. The Apex Court further observed that the rule making authority could well have denied the benefit of set-off. But it chose to be generous and it extended the said benefit subject to deduction of one per cent of the sale price of such goods. Therefore, no valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It is open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession.

The provisions of Rule 42 of the Gujarat Sales-tax Rules, 1970 being in pari materia except that they grant the benefit of set-off to the extent of 90%, the principles laid down by the Apex Court in the aforesaid decision would squarely apply. Whether the abridgement provided by the rule making authority is one per cent or ten per cent would not make any difference to the applicability of the aforesaid principle. We are, therefore, of the view that the challenge raised by the petitioners to Rule 42 of the Gujarat Sales-tax Rules, 1970, in so far as it restricts the claim of set-off of sales-tax to 90% in the cases where in the invoices the same is not separately recorded, is clearly covered by the aforesaid decision of the Apex Court against the petitioners and in favour of the revenue. Prayer (A), therefore, deserves to be rejected.

3. Coming to prayers (B) and (C) which are alternative, it appears to us that the petitions raise commercial disputes between the respective petitioners and the common supplier-NDDB. As per the settled legal position, in exercise of its extraordinary, prerogative and discretionary writ jurisdiction under Article 226 of the Constitution, this Court would ordinarily not entertain such commercial disputes. Hence, prayers (B) and (C) are not granted, but with a clarification that it will be open to the petitioners to raise the same before

appropriate forum, if at all such disputes are justiciable in the first place.

4. Subject to the aforesaid observations in respect of prayers (B) and (C), the petitions are dismissed. Rule is discharged in each petition with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-